



J. Sanford
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Patent
Attorney's Docket No. 000400-873

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of)
Hirofumi NITTA et al.) Group Art Unit: 3683
Application No.: 09/963,395) Examiner: B. Pezzlo
Filed: September 27, 2001) Confirmation No.: 9045
For: HYDRAULIC BRAKE SYSTEM)
FOR VEHICLE)

GROUP 3600

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RESPONSE TO ELECTION OF SPECIES REQUIREMENT

Assistant Commissioner for Patents
Washington, D. C. 20231

Sir:

In response to the Official Action dated September 27, 2002, the following remarks are submitted.

The Official Action states that the claims in this application are directed to six different "species". As identified in the Official Action, the six "species" are as follows.

Species 1 - Claim 2, block 104 in Fig. 4

Species 2 - Claims 3 and 10, block 109 in Fig. 4

Species 3 - Claims 6 and 13, block 106 in Fig. 4

Species 4 - Claims 6 and 13, block 107 in Fig. 4

Species 5 - Claims 6 and 13, block 108 in Fig. 4

Species 6 - Claim 7

Based on the observation that the six "species" are patentably distinct from one another, an election of species requirement has been imposed requiring an election of one of the six "species".

In response to the election of species requirement, applicants hereby elect, with traverse, The "species" identified as Species 2 in the Official Action. Claims 1, 4, 5, 8, 9, 11, 12 and 14 are generic to all "species" of the invention and are readable on the elected "species". In addition, Claims 3 and 10 are readable on what the Official Action identifies as Species 2.

The election of species requirement is traversed for several reasons. First, contrary to the observation in the Official Action, the claims in this application are not directed to six different species of the invention. As discussed in § 806.04(e) of the Manual of Patent Examining Procedure, species are constituted by specifically different embodiments. Here, the purportedly different species define different aspects of a single disclosed embodiment.

In addition, § 806.04(f) of the Manual of Patent Examining Procedure points out that claims directed to different species must be mutually exclusive.

The general test as to when claims are restricted, respectively, to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first. This is frequently expressed by saying that claims to be restricted to different species must recite the mutually exclusive characteristics of such species.

The claims in this application do not define mutually exclusive characteristics of different embodiments, but rather define different characteristics of a single disclosed embodiment of the vehicle hydraulic brake system. In particular, the blocks identified as 104, 106, 107, 108 and 109 of Fig. 4 define a series of operations carried out by the electronic control device to effect the driving control of the hydraulic pump. In particular, at step 104, the CPU judges whether the vehicle is running. If the system determines that the vehicle is running, steps 106-109 are performed to check whether or not the conditions for driving the hydraulic pump FP to output a very high power hydraulic pressure are satisfied. At step 106, if the estimated vehicle load is found to be equal to or greater than a predetermined value, the hydraulic pump is driven to output the high power hydraulic pressure. If the estimated vehicle load is less than a predetermined value, step 107 is carried out to determine if the automatic brake control is active. If it is, step 110 is performed to drive the hydraulic pump to output the high hydraulic pressure. If it is determined in step 107 that the automatic brake control is inactive, step 108 is carried out to determine if the urgent or sudden brake operation is completed. If it is determined that the urgent brake operation is completed, the operation in step 110 is performed to drive the hydraulic pump FP to output the hydraulic pressure high. If it is determined that the urgent brake operation is not completed, the operation in step 109 is carried out to determine if brake fade occurs. If so, step 110 is carried out to drive the hydraulic pump to output the high hydraulic pressure.

It is thus apparent that the operations carried out in the blocks identified as 104, 106, 107, 108 and 109 of Fig. 4 constitute a series of operations carried out in connection with a single disclosed embodiment of the vehicle hydraulic brake system. Further, Claim 7 defines additional characteristics of the single disclosed embodiment such as the detection of the operating amount of the brake operating member, the detection of the vehicle deceleration, and the way in which the occurrence of brake fade is determined. These various claimed characteristics of the invention are not mutually exclusive. Quite the contrary, they all relate to a single disclosed species. For at least these reasons, the election of species requirement is improper and should be withdrawn. In the event the Examiner still believes the election of species requirement is proper, the Examiner is kindly asked to explain in detail why the blocks identified as 104, 106, 107, 108 and 109 in Fig. 4 and the features recited in Claim 7 are mutually exclusive and constitute different species, notwithstanding that they all relate to a single disclosed species of the vehicle hydraulic brake system.

The election of species requirement is also traversed because all of the claims of this application can be examined at the same time without serious burden. Quite clearly, the search required for the elected "species" would be coextensive with that required for the non-elected "species". In addition, examining all of the claims of this application at the same time would only require consideration of a few additional claims. Thus, no serious burden would result if all of the claims of this application are examined at the same time.

In light of the foregoing, withdrawal of the election of species requirement and examination of all of the claims of this application are respectfully requested.

Should any questions arise in connection with this application, the undersigned respectfully requests that he be contacted at the number indicated below.

Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, L.L.P.

By: Matthew L. Schneider
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Date: October 28, 2002



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AMENDMENT/REPLY TRANSMITTAL LETTER

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

Enclosed is a reply for the above-identified patent application.

[] A Petition for Extension of Time is also enclosed.

[] A Terminal Disclaimer and a check for [] \$55.00 (2814) [] \$110.00 (1814) to cover the requisite Government fee are also enclosed.

[] Also enclosed is _____.

[] Small entity status is hereby claimed.

[] Applicant(s) request continued examination under 37 C.F.R. § 1.114 and enclose the [] \$370.00 (2801) [] \$740.00 (1801) fee due under 37 C.F.R. § 1.17(e).

[] Applicant(s) previously submitted _____, on _____, for which continued examination is requested.

[] Applicant(s) request suspension of action by the Office until at least _____, which does not exceed three months from the filing of this RCE, in accordance with 37 C.F.R. § 1.103(c). The required fee under 37 C.F.R. § 1.17(i) is enclosed.

[] A Request for Entry and Consideration of Submission under 37 C.F.R. § 1.129(a) (1809/2809) is also enclosed.

[X] No additional claim fee is required.

[] An additional claim fee is required, and is calculated as shown below:

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AMENDED CLAIMS					
	NO. OF CLAIMS	HIGHEST NO. OF CLAIMS PREVIOUSLY PAID FOR	EXTRA CLAIMS	RATE	ADDT'L FEE
Total Claims	14	MINUS 20 =	0	× \$18.00 (1202) =	0.00
Independent Claims	2	MINUS 3 =	0	× \$84.00 (1201) =	0.00
If Amendment adds multiple dependent claims, add \$280.00 (1203)					0.00
Total Amendment Fee					0.00
If small entity status is claimed, subtract 50% of Total Amendment Fee					0.00
TOTAL ADDITIONAL FEE DUE FOR THIS AMENDMENT					0.00

A claim fee in the amount of \$ _____ is enclosed.

Charge \$ _____ to Deposit Account No. 02-4800.

The Commissioner is hereby authorized to charge any appropriate fees under 37 C.F.R. §§ 1.16, 1.17, 1.20(d) and 1.21 that may be required by this paper, and to credit any overpayment, to Deposit Account No. 02-4800. This paper is submitted in duplicate.

Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, L.L.P.

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